

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 74 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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AMARSINGH VARWABHAI VAGHELA

Versus

STATE OF GUJARAT

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Appearance:

None present for Petitioner

Ms. Nandini Joshi, AGP for Respondents

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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 17/11/2000

ORAL JUDGEMENT

1. In this petition filed under Article 226/227 of the Constitution, the petitioner has brought under challenge the order dated December 17, 1988 passed by the Urban Lands Tribunal and Ex-Officio Secretary, Revenue Department in Appeal No. APL/UL/Ahmedabad-1240/84 in

exercise of powers under section 33 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the Act'), whereby he has disallowed the appeal filed by the present petitioner and thereby confirmed the order dated June 30, 1984 passed by the Competent Authority and Additional Collector, Urban Land Ceiling, Ahmedabad in ULC/U.6/Naroda/427/434. By the said order dated June 30, 1984 the Competent Authority and Additional Collector, Urban Land Ceiling, Ahmedabad declared 922 sq.mt. of land out of land bearing S.Nos. 1192/2 admeasuring 1922 sq.mt. situated in Naroda as excess land of which the petitioner was the owner.

2. According to the petitioner, after the Act came into force the petitioner applied in the prescribed Form No.1, under Section 7 of the Act, on September 14, 1976 stating therein that the said land is subject to acquisition proceedings and the said land was included in TP Scheme, Naroda I and since the land was included in TP Scheme prior to 1975-76 and it was under the process of finalization no other development activity could be undertaken in view of the rules prevalent at the relevant time and in view of this the land could not be said to be vacant land. It is stated in the petition that there were 11 members in the family of the petitioner out of which 3 sons of the petitioner were major as on January 26, 1976 and, therefore, as per the principles of law laid down by the Supreme Court as well as this Court, each member is deemed to be a member for the purpose of the Act. Notwithstanding that the petitioner had three major sons at the relevant point of time, the Competent Authority has not considered separate units for them and declared 922 sq.mt. of land as excess land. It is further stated in the petition that the final statement was issued on May 24, 1984 and was sent to the petitioner on June 30, 1984. Aggrieved by the order passed by the Competent Authority and Additional Collector, the petitioner preferred appeal before the Urban Land Ceiling Tribunal under Section 33 of the Act. The said appeal also met with the same fate. Aggrieved thereby the present petition is filed.

3. When the petition came up for hearing before this Court, the office had made an endorsement that Ms. Tanveer M. Shaikh, the learned advocate for the petitioner has become a City Civil Judge and, therefore, notice came to be issued to the petitioner intimating him that the concerned advocate appointed by him has been appointed as a Judge of the lower judiciary and, therefore, the petitioner was asked to remain present before this Court personally or through his advocate on

August 18, 2000. The said notice was returned unserved with the endorsement that the petitioner has expired. As per the endorsement made in the notice by the Bailiff, as reported by the son of the petitioner, the petitioner has expired before four years.

4. From the bailiff the son of the petitioner might have come to know about the pendency of the petition before this Court. In spite of that, it may be noted that no step has been taken by the heirs and legal representatives of the deceased to bring them on record by filing appropriate application. Thus it is clear and there is every reason to believe that the heirs and legal representatives of the petitioner are not interested in prosecuting the matter further.

5. Ms. Nandini Joshi, learned AGP has contended that since the heirs and legal representatives of the petitioner are not interested in prosecuting the matter any further as no application for bringing them on record is filed so far, the petition is abated and, therefore, necessary order in that regard may be passed. Besides this she claimed that even as per clause (a) of sub-section (1) of Section 3 of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 ('Repeal Act' for short hereinafter), when the possession of the excess land has been taken over by the Competent Authority, the repeal of the Principal Act shall not have any effect, the petitioner is not entitled to the benefit of the Repeal Act and, therefore, the petitioner is not entitled to any relief as claimed in the petition.

6. Mr. J.B. Solanki, the Competent Authority and Deputy Collector, Urban Land Ceiling, Ahmedabad, has filed affidavit, inter alia, contending that the Competent Authority had passed an order dated June 30, 1984 declaring 922 sq.mt. of land as excess. Against this order the petitioner preferred Appeal No. 1240 of 1984 before the Urban Land Ceiling Tribunal and the Tribunal disallowed the appeal by order dated December 17, 1988. It is further contended in the affidavit that looking to the proceedings and the further progress as per the record is that the notification under section 10 (3) of the Act was issued on February 19, 1985 which was duly published and accordingly the land in question has been vested into the Government and no right or title now remains in the hands of the petitioner. It is further contended in the affidavit that thereafter a notice under Section 10 (5) of the Act was issued on March 27, 1989 which was duly served upon the petitioner on May 25, 1989 and thereafter the possession of the land in question has

been taken over on June 26, 2000 in presence of Panchas. It is further contended that the possession of the land in question has been taken over by the Government before the Repeal Act came into force and, therefore, the petitioner is not entitled to any relief under the Repeal Act.

7. According to the office endorsement the petitioner has died prior to four years. As is clear from the record, his heirs and legal representations have chosen not to bring them on record of the case and to continue the present litigation. Thus, it is clear that none of the family members of the petitioner is interested in prosecuting the matter any further. Moreover, as per the Repeal Act the petitioner is not entitled to get benefit as possession is taken over by the competent authority way back in June 26, 1990, that is, before 10 years prior to the Repeal Act coming into force. Seen in the above context, since the petitioner has died long back the petition is abated.

8. Seen in above context, no finding on merit is required to be recorded as the petition is abated and as per the Repeal Act the petitioner is not entitled to get any benefit under the Repeal Act.

9. For the foregoing reasons, the petition stands abated. Rule is, therefore, discharged with no order as to costs. Interim relief which was granted earlier stands vacated.

17.11.2000. (A.M. Kapadia, J.)

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